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2                   IN THE UNITED STATES DISTRICT COURT  
3                   FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 CLARENCE BROWN,

12                   Plaintiff,

CV F 05 0253 OWW WMW P

13                   vs.

FINDINGS AND RECOMMENDATION

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15 T. MORTON, et al.,

16                   Defendants.

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19                   Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42  
20 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28  
21 U.S.C. § 636(b)(1).

22                   This action proceeds on the first amended complaint, filed in response to an  
23 earlier order dismissing the original complaint with leave to amend.. Plaintiff, an inmate in the  
24 custody of the California Department of Corrections at CSP Corcoran, brings this civil rights  
25 action against defendant correctional officials employed by the Department of Corrections at

1 CSP Corcoran.

2           In the order dismissing the original complaint, Plaintiff was advised of the  
3 following. Plaintiff's sole claim in this complaint is that he was unfairly subjected to a prison  
4 disciplinary process. Plaintiff specifically alleges that he was "set up" and subjected to unlawful  
5 prosecution.

6           Plaintiff brings this action pursuant to section 1983. In Edwards v. Balisok, 520  
7 U.S. 641, 644 (1997), the United States Supreme Court applied the doctrine articulated in Heck  
8 v. Humphrey, 512 U.S. 477, 487 (1994), to prison disciplinary hearings. In Heck, the Court held  
9 that a state prisoner's claim for damages for unconstitutional conviction or imprisonment is not  
10 cognizable under 42 U.S.C. § 1983 if a judgment in favor of plaintiff would necessarily imply the  
11 invalidity of his conviction or sentence, unless the prisoner can demonstrate that the conviction  
12 or sentence has previously been invalidated. 512 U.S. at 487. In applying the principle to the  
13 facts of Balisok, the Court held that a claim challenging the procedures used in a prison  
14 disciplinary hearing, even if such a claim seeks money damages and no injunctive relief, is not  
15 cognizable under § 1983 if the nature of the inmate's allegations are such that, if proven, would  
16 necessarily imply the invalidity of the result of the prison disciplinary hearing. 520 U.S. at 646.  
17 Because such a challenge, if successful, would invalidate the duration of the inmate's  
18 confinement, it is properly brought as a habeas corpus petition and not under § 1983. Heck, 512  
19 U.S. at 487; Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

20           Although the specific facts of Balisok involved allegations of deceit and bias on  
21 the part of a hearing officer, the Court's reasoning applies to any claim which, if proven, would  
22 have the effect of invalidating the result of a disciplinary hearing. The Ninth Circuit has recently  
23 applied the Balisok rule to a case in which a prisoner sought damages based on allegations that  
24 prison officials relied on false information to find him ineligible for parole. Butterfield v. Bail,  
25 120 F.3d 1023 (9th Cir. 1997). Because the claim necessarily implied the invalidity of the  
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1 plaintiff's continued confinement, it could not accrue until the conviction or sentence had been  
2 invalidated. Id.

3 Plaintiff was advised that in this case, plaintiff's core factual allegations are that  
4 he was prosecuted unlawfully. Because plaintiff's claim necessarily implies the invalidity of  
5 plaintiff's continued confinement as a result of his disciplinary hearing, plaintiff's claim will not  
6 accrue until the conviction or sentence has been invalidated. The complaint was therefore  
7 dismissed.

8 In the first amended complaint, Plaintiff restates, with greater factual detail, the  
9 allegations of the original complaint. Plaintiff does not, however, allege any facts suggesting that  
10 his conviction was reversed, expunged, or otherwise invalidated. Plaintiff has failed to correct  
11 the deficiencies identified in the order dismissing the original complaint. Because Plaintiff has  
12 failed to correct the deficiencies identified in the original complaint, the court recommends  
13 dismissal of the claims made in the original complaint with prejudice for failure to state a federal  
14 claim upon which the court could grant relief. See Noll v. Carlson, 809 F. 2d 1446, 1448 (9<sup>th</sup> Cir.  
15 1987) (prisoner must be given notice of deficiencies and opportunity to amend prior to  
16 dismissing for failure to state a claim).

17 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed for  
18 failure to state a claim upon which relief can be granted.

19 These findings and recommendations are submitted to the United States District  
20 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636 (b)(1)(B). Within  
21 twenty days after being served with these findings and recommendations, plaintiff may file  
22 written objections with the court. Such a document should be captioned "Objections to  
23 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
24 objections within the specified time waives all objections to the judge's findings of fact. See  
25 Turner v. Duncan, 158 F.3d 449, 455 (9<sup>th</sup> Cir. 1998). Failure to file objections within the  
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1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
2 F.2d 1153 (9th Cir. 1991).

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6 IT IS SO ORDERED.

7 Dated: July 3, 2008

/s/ William M. Wunderlich  
8 UNITED STATES MAGISTRATE JUDGE

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